

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NATIFAH COOPER,

Plaintiff,

-against-

Police Officer PAUL DIEUGENIA, Shield No. 13223;  
Police Officer ALEKSANDR PASYNKOV, Tax Id.  
947328, and JANE DOE 1 through 10, individually and in  
their official capacities (the names John and Jane Doe  
being fictitious, as the true names are presently unknown),

Defendants.  
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14-CV-6136 (PKC)(RLM)

**PLAINTIFF'S LOCAL  
RULE 56.1 STATEMENT  
IN OPPOSITION TO  
DEFENDANTS' MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

Plaintiff submits the following response, which consists of two sections. In the first section, pursuant to Local Rule 56.1, Plaintiff responds to each assertion in Defendants' Rule 56.1 statement in support of its motion for partial summary judgment. In the second section, Plaintiff submits a counter-statement of material facts that contains additional factual assertions, as provided in Local Rule 56.1, demonstrating the existence of genuine material issues. Supporting factual material is submitted in the Declaration of Robert Marinelli in Opposition to Defendants' Motion for Summary Judgment (Marinelli Decl.) and attached exhibits.

**I. PLAINTIFF'S RESPONSE TO DEFENDANTS' RULE 56.1 STATEMENT**

1. On April 17, 2013, plaintiff was arrested along with her boyfriend, Alexander Kostirkin. (Plaintiff's Amended Complaint, dated March 24, 2015, annexed to the Declaration of Okwede Okoh as Exhibit A.)

**Admit.**

2. Plaintiff left her house with a dog Benji to meet her boyfriend near his home at 3714 Bayview Avenue in Brooklyn, NY. (Plaintiff's Deposition transcript, dated October 23, 2015, annexed to the Declaration of Okwede Okoh as Exhibit B, pgs. 34-35.)

**Admit.**

3. Plaintiff and her boyfriend were walking the dog on the grass area across from 3714 Bayview Avenue when they encountered a person on the area in front of the bay. (Exhibit B, pgs. 37-38.)

**Admit that Plaintiff and Mr. Kostirkin were walking the dog when they encountered a person on the area in front of the bay. Plaintiff asserts that the person was a homeless man, who was and remains unknown to Plaintiff and Mr. Kostirkin. Marinelli Decl. Ex. 2 (Deposition of Natifah Cooper ["Cooper"] at 37:3-38:10).**

4. There was a small bonfire going in front of the group when the officers approached the scene. (Exhibit B, pg. 38; Police Officer Pasyukov Deposition transcript, dated October 23, 2015, annexed to the Declaration of Okwede Okoh as Exhibit C, pgs. 12-15; Police Officer Dieugenia Deposition transcript, dated December 18, 2015, annexed to the Declaration of Okwede Okoh as Exhibit D, pg. 14.)

**Plaintiff denies that she, Mr. Kostirkin, and the unknown homeless man were using the bonfire as a group at any time. The homeless person had a small fire going and was seated alone, when he asked Mr. Kostirkin for help opening his can of food. Marinelli Decl. Ex. 2 (Cooper at 37:3-39:15; 41:12-41:22).**

5. The officers approached to speak with plaintiff's boyfriend, and they observed plaintiff's boyfriend with a knife. (Exhibit B, pg. 46.)

**Plaintiff denies that the officers observed Mr. Kostirkin with a knife. Plaintiff asserts that the knife was in Mr. Kostirkin's jacket pocket at the time he was arrested. Marinelli Decl. Ex. 2 (Cooper at 47:11-47:21). After the officers approached and placed Mr. Kostirkin in handcuffs, the officers stated that Mr. Kostirkin was being arrested and gave no reason for his arrest. Id. at 46:8-47:10.**

6. After the officers approached plaintiff's boyfriend, they recovered the knife and it was determined to be a gravity knife. (Exhibit B, pg. 46; Exhibit D, pg. 24.)

**Plaintiff denies that Mr. Kostirkin's knife was a gravity knife.**

7. Plaintiff's boyfriend was arrested for possession of the gravity knife and for violating the bonfire regulations. (Exhibit C, pg. 27.)

**Admit that Mr. Kostirkin was arrested. Plaintiff asserts that the officers falsely charged Mr. Kostirkin with possession of a gravity knife and for violating the bonfire regulations.**

8. Plaintiff blocked Officer Pasyukov's pathway as he attempted to place plaintiff's boyfriend in the police vehicle after he was arrested. (Exhibit C, pg. 30; Exhibit D, pg. 27.)

**Plaintiff denies that she blocked Officer Pasyukov's pathway at any point. Plaintiff was located behind Officer Pasyukov, such that the officer had a clear path to the police car throughout the entire incident. Marinelli Decl. Ex. 2 (Cooper at 60:4-60:22); Marinelli Decl. Ex. 3 (Deposition of Alexandr Pasyukov ["Pasyukov"] at 30:15-32:18; 40:8-40:16; 42:18-43:6).**

9. Plaintiff pushed Officer Dieugenia who was attempting to get her boyfriend's phone for safe keeping as Officer Pasyukov handed the cell phone to Officer Dieugenia. (Exhibit D, pgs. 36-37.)

**Plaintiff denies that she pushed any of the officers. Marinelli Decl. Ex. 2 (Cooper at 59:13-15). Plaintiff further asserts that Mr. Kostirkin asked whether he could give Plaintiff his phone, and Officer Pasyukov said yes. Id. at 52:13-54:17. Mr. Kostirkin dropped his phone, and Plaintiff tried to retrieve it from the floor, since Officer Pasyukov had given his permission to take Mr. Kostirkin's phone. Id. at 54:4-54:17. When Plaintiff bent down to pick up the phone, Officer Dieugenia pushed her. Id. at 54:18-54:23.**

## **II. PLAINTIFF'S COUNTER-STATEMENT OF DISPUTED MATERIAL FACTS**

1. On April 17, 2013, Plaintiff was with Mr. Kostirkin walking their dog, when a person they did not know asked Mr. Kostirkin for help opening a can of food. Marinelli Decl. (Cooper at 37:3-38:10). The unknown individual was a homeless man, who was seated alone in front of a small bonfire. Id. at 37:3-39:15; 41:12-41:22.
2. The officers approached Plaintiff and Mr. Kostirkin, and immediately placed Mr. Kostirkin in handcuffs. Id. at 46:8-47:10. The officers gave no reason for Mr. Kostirkin's arrest. Id. at 46:25-48:5; 50:20-51:15.
3. Officer Pasyukov escorted Mr. Kostirkin toward a police car. Id. at 51:25-52:11; Marinelli Decl. Ex. 3 (Pasyukov at 30:7-30:18).
4. Plaintiff took the dog to Mr. Kostirkin's house nearby, put the dog inside, and returned to the arrest scene with Mr. Kostirkin's mother. Marinelli Decl. Ex. 2 (Cooper at 53:20-54:13).
5. Plaintiff never blocked Officer Pasyukov's pathway. Plaintiff was located behind Officer Pasyukov while he was apprehending Mr. Kostirkin, and the officer at all times had a clear path to the police car. Marinelli Decl. Ex. 2 (Cooper at 60:4-60:22); Marinelli Decl. Ex. 3 (Pasyukov at 30:15-32:18; 40:8-40:16; 42:18-43:6).
6. Throughout the incident, Plaintiff treated the officers with respect and deferred to their authority. Marinelli Decl. Ex. 2 (Cooper at 56:4-57:2). Plaintiff did not raise her voice, raise her hands, or push any of the officers. Id. at 56:4-57:2; 59:10-59:15.
7. While Plaintiff had her back turned to Officer Dieugenia, he pushed her. Marinelli Decl. Ex. 2 (Cooper at 54:19-55:23). When Plaintiff asked why he had pushed

her, he immediately grabbed Plaintiff's arm, punched her in the face with a closed fist, and threw her to the ground. Id. at 55:8-55:23; 57:3-57:20.

8. Officer Dieugenia pushed Plaintiff's face into the dirt, put his knee in her back, and told her to "stop resisting." Id. at 57:21-58:20. Plaintiff was not resisting, and tried to tell the officer that he was hurting her. Id. Mr. Kostirkin's mother told the officer that Plaintiff had asthma, and he simply replied, "They all do." Id.

9. Plaintiff was arrested, taken to Central Booking, and received an adjournment in contemplation of dismissal (ACD) after numerous court appearances.

Marinelli Decl. Ex. 1 (Plaintiff's Amended Complaint, dated March 24, 2015).

Dated: June 14, 2016  
New York, New York

/s  
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